

DOCKET NO.: CP380G
 Application No.: 10/789,604
 Office Action Dated: February 27, 2004

PATENT

BEST AVAILABLE COPY**REMARKS**

Restriction has been required under 35 U.S.C. § 121 to one of five groups of inventions, characterized as Groups I to V. The claims of each group, and the subject matter associated with each group, are set forth below.

Group	Claims	Subject Matter
I	13	Methods of treating cancer in a human, wherein the cancer is melanoma
II	13	Methods of treating cancer in a human, wherein the cancer is breast cancer
III	13	Methods of treating cancer in a human, wherein the cancer is colon cancer, ovarian cancer, renal cancer, bladder cancer, or prostate cancer
IV	13	Methods of treating cancer in a human, wherein the cancer is lung cancer
V	13 to 15	Methods of treating cancer in a human, wherein the cancer is a cancer of the central nervous system

Applicants respectfully traverse the restriction requirement because a search and examination of the subject matter of the entirety of the pending claims can be conducted without a serious burden.

The purpose of § 121 is to avoid the necessity of conducting separate and diverse searches of claims directed to independent (unrelated) subject matter. Separate and diverse searches would not be required for the present application, however, because the relationship among the claimed subject matter is such that a generalized search of the subject matter encompassed by the claims of any one of Groups 1 to V would necessarily lead to disclosures, to the extent that any exist, of the subject matter encompassed by the claims of the remaining groups. For example, a search of methods for treating cancer in humans that utilize a combination of one or more arsenic compounds and radiation would necessarily lead to specific

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disclosures, to the extent that any exist, of methods for treating the particular types of cancers delineated in groups I to V. In this regard, the subject matter of each of groups I to V has been classified by the Patent Office in the same class and subclass. Accordingly, a search and examination of the entirety of the subject matter encompassed by groups I to V would not impose a serious burden on the Examiner, and Applicants respectfully request withdrawal of the restriction requirement. M.P.E.P. § 803 ("If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.") (emphasis added).

Nevertheless, in accordance with 37 CFR § 1.143, applicants hereby provisionally elect the subject matter of Group III for prosecution on the merits, encompassing claim 13 and drawn to methods of treating colon cancer, ovarian cancer, renal cancer, bladder cancer, or prostate cancer in a human. Based upon the comments made in the Office Action with respect to the Examiner's intention to withdraw the restriction requirement if the claims that link the subject matter of Groups I to V are found allowable, it is Applicants' understanding that this election is being made solely to aid the Examiner in conducting an initial search and examination of the claimed subject matter. Applicants accordingly ask the Examiner to treat this election as an election of species, and expand the search and examination beyond the elected subject matter if such subject matter is found to be allowable over the prior art, until the examination includes the full scope of the claimed subject matter.

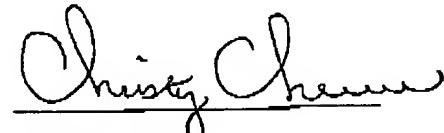
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Conclusion

Applicants believe that the foregoing constitutes a complete and full response to the Office Action of record. Accordingly, an early and favorable action is respectfully requested.

Respectfully submitted,



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